Le Meridien Kuala Lumpur owned by Daito Asia Development (M) Sdn Bhd v Zulkarnain bin Hussin & Ors and another appeal

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NOS WA-16–12–06 OF 2023 AND WA-16–13–06 OF 2023
AHMAD KAMAL J
17 SEPTEMBER 2024

Labour Law — Wages — Restructuring of wages — Implementation of Minimum Wages Order ('MWO') 2012 — The appellant restructured employees' wages by using part of service charge to meet minimum wage requirements under MWO 2012 — Respondents challenged as unlawful deductions — Whether respondents proved elements of case — Whether s 24 of Employment Act 1955 misconstrued — Whether decision in case of Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia [2021] 3 MLJ 466 misconstrued — Whether decision of labour summons case failed to be considered — Whether Labour Court erred in allowing respondents' claim although some claims were time-barred and failed to produce payslips to support claims

The Guidelines on the Implementation of the Minimum Wages Order ('MWO') 2012 set out the method of restructuring the wages for the hotel sector which provided that for the hotel sector where the service charge collection was implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages. With the coming into effect of the MWO 2012, appellant decided to implement the MWO 2012 by restructuring the employees' wages. By a letter dated 1 October 2013, the appellant informed eight respondents of the implementation of the MWO 2012. The eight respondents accepted the letter and the terms contained therein by virtue of their signature at the acceptance portion of the respective letters. Meanwhile, for the remaining 16 respondents the appellant informed them of the addition to their basic salary in accordance with the implementation of the MWO 2012 in the relevant years. The remaining 16 respondents had accepted the letter and the terms contained therein by virtue of their signature at the acceptance portion of the respective letters. Subsequently, the respondents filed their respective claims for the balance of service charges at the Labour Office. It was the case of the respondents that the deduction from the service charge to top up basic salary was unlawful and the same ought to be paid back. The presiding officer of the Labour Court heard the respondents, considered the evidence, the position of the law as stated by the Federal Court in the case of *Crystal Crown Hotel*

& Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia [2021] 3 MLJ 466 ('Crystal Crown') and ruled that the deductions were made unlawfully and the appellant was ordered to pay back the monies so deducted. Hence these appeals. The appellant submitted that the presiding officer of the Labour Court (a) erred in law in failing to appreciate that the respondents failed to prove the requisite elements of their case; (b) misconstrued s 24 of the Employment Act 1955; (c) misconstrued the Federal Court decision of Crystal Crown; (d) failed to consider labour summons case *Wan Noor Rizal bin Ali and Others v Le Meridien Kuala Lumpur owned by Daito Asia Development (M) Sdn Bhd* (Summons Case No KBR/11401/2020/0281) (unreported) where the factual matrix, parties involved, issues and documentary evidence were identical; and (e) erred in allowing the respondents' claim although some claims were time-barred and some of the respondents failed to produce payslips to support their claims.

Held, allowing the appeal:

(1) There was no evidence adduced by the respondents to show how many service charge points they were entitled to. Further, the employment contracts did not make any reference to any enclosures and did not contain any signature. The payslips produced by the respondents merely stated (apart from other allowances) the 'basic salary' and 'service charge' components. The payslip did not specify how many service charge points they were entitled to. In this regard, there was no evidence adduced by the respondents that they were entitled to three service charge points as alleged. The respondents also did not adduce any evidence regarding the value of each service claimed for each month. Next, the respondents had produced their payslips for some of the months claimed by them, but not for all the months which were claimed by them. In respect of the months for which payslips were not produced, there was no evidence that the sums claimed by all the respondents were actually deducted from their wages (see paras 24–25, 29, 31 & 33).

(2) The Labour Court failed to appreciate that the eight respondents had expressly consented to the terms contained in the letter dated 1 October 2013 by virtue of their signature at the acceptance portion of the respective letters. The restructuring of the respondents' wages in this matter was not done unilaterally. The presiding officer of the Labour Court erred in law and in fact when she failed to consider the appellant's evidence that it was already explained to the respondents prior to the execution of their employment contracts that the appellant would be deducting part of their service charge entitlement to meet the minimum wage rate at that time. Since the eight respondents had expressly consented to the terms, therefore they were bound by the terms contained therein (see paras 37–38, 40 & 42).

(3) The Labour Court failed to appreciate that the remaining 16 respondents had consented by conduct to the restructuring of the wages in the consequent years vide their signature at the acceptance portion of the respective letters. If the remaining 16 respondents were entitled to three service charge points they would know immediately if the appellant had deducted their service charges. However, no complaint was made by them against the appellant and they continued working with the appellant until the filing of their claims at the Labour Court (see paras 44–45).

(4) The Labour Court erred in law in ruling that the appellant had made unlawful deductions from the respondents' wages in breach of s 24 of the Employment Act 1955 and hence their consent to the same was irrelevant. The Labour Court misconstrued service charge as being part of 'wages' (defined under s 2 of the Employment Act 1955). The Labour Court erred in law in failing to give effect to and/or have regard to the Guidelines on the Implementation of the MWO 2012 which set out the method of restructuring the wages for the hotel sector in which it was provided that for the hotel sector where the service charge collection was implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages. The appellant should not be faulted for having relied on the Guidelines. The restructuring of the respondents' wages to meet the minimum wage was done with the respondents' full knowledge and consent. The respondents' claims were an afterthought as the respondents did not raise any grievances on the matter during the tenure of their employment with the appellant (see paras 54–56 & 58–59).

(5) The Labour Court erred in law in failing to consider the decision in *Wan Noor Rizal bin Ali and Others v Le Meridien Kuala Lumpur owned by Daito Asia Development (M) Sdn Bhd* (Summons Case No KBR/11401/2020/0281) (unreported) and/or provide reasons for not referring to the decision of the said case although the same main issues were ventilated in the said case, the same contents of documents were adduced (especially the letters on the restructuring of wages) in the said case and the same company/employer was involved in the said case (see para 63).

(6) During the proceedings before the Labour Court, it was found that some claims were filed outside the time limit and the payslips produced were incomplete. However, these factors were not taken into account by the Labour Court (see para 64).

[Bahasa Malaysia summary

Garis Panduan Pelaksanaan Perintah Gaji Minimum ('PGM') 2012 menetapkan kaedah penstrukturan semula gaji bagi sektor hotel yang

membenarkan majikan, dalam sektor hotel yang melaksanakan kutipan caj perkhidmatan, untuk menukar keseluruhan atau sebahagian caj perkhidmatan yang sepatutnya diagihkan kepada pekerja, sebagai sebahagian daripada gaji minimum. Dengan berkuatkuasanya PGM 2012, perayu memutuskan untuk melaksanakan PGM 2012 dengan menstruktur semula gaji pekerja. Melalui surat bertarikh 1 Oktober 2013, perayu telah memaklumkan kepada lapan orang responden mengenai pelaksanaan PGM 2012. Lapan responden tersebut telah menerima surat berkenaan dan terma-terma yang terkandung di dalamnya melalui tandatangan mereka di ruangan penerimaan pada surat masing-masing. Sementara itu, bagi baki 16 orang responden yang lain, perayu telah memaklumkan kepada mereka mengenai penambahan kepada gaji pokok selaras dengan pelaksanaan PGM 2012 dalam tahun-tahun berkaitan. Kesemua 16 responden ini juga telah menerima surat tersebut dan terma-terma yang terkandung di dalamnya melalui tandatangan mereka di ruangan penerimaan surat masing-masing. Selepas itu, responden telah memfailkan tuntutan masing-masing bagi baki caj perkhidmatan di Pejabat Tenaga Kerja. Responden berhujah bahawa pemotongan daripada caj perkhidmatan bagi tujuan menampung gaji pokok adalah tidak sah dan wang tersebut sepatutnya dibayar balik. Pegawai pengerusi Mahkamah Perusahaan setelah mendengar keterangan responden, meneliti keterangan, serta mempertimbangkan kedudukan undang-undang seperti yang dinyatakan oleh Mahkamah Persekutuan dalam kes *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia* [2021] 3 MLJ 466 ('Crystal Crown') dan memutuskan bahawa pemotongan tersebut dibuat secara tidak sah dan perayu telah diperintahkan untuk membayar semula wang yang telah dipotong. Oleh itu, rayuan ini. Perayu menghujahkan bahawa pegawai pengerusi Mahkamah Perusahaan telah: (a) terkhilaf dari segi undang-undang kerana gagal memahami bahawa responden gagal membuktikan elemen-elemen yang diperlukan dalam kes mereka; (b) telah salah mentafsir s 24 Akta Kerja 1955; (c) telah salah mentafsir keputusan Mahkamah Persekutuan dalam kes *Crystal Crown*; (d) gagal mempertimbangkan kes saman buruh *Wan Noor Rizal bin Ali and Others v Le Meridien Kuala Lumpur owned by Daito Asia Development (M) Sdn Bhd* (Summons Case No KBR/11401/2020/0281) (unreported) yang mana fakta, pihak-pihak terlibat, isu dan keterangan dokumentari adalah serupa; dan (e) telah terkhilaf membenarkan tuntutan responden walaupun sebahagian tuntutan telah tamat tempoh dan sebahagian responden gagal mengemukakan slip gaji sebagai sokongan terhadap tuntutan mereka.

Diputuskan, membenarkan rayuan:

(1) Tiada keterangan dikemukakan oleh responden untuk menunjukkan berapa banyak mata caj perkhidmatan yang mereka berhak terima. Selain itu, kontrak pekerjaan tidak merujuk kepada sebarang lampiran dan tidak mengandungi sebarang tandatangan. Penyata gaji yang

dikemukakan oleh responden hanya menyatakan (selain daripada elaun lain) komponen 'gaji pokok' dan 'caj perkhidmatan'. Penyata gaji tersebut tidak menyatakan berapa banyak mata caj perkhidmatan yang mereka berhak terima. Dalam hal ini, tiada keterangan dikemukakan oleh responden bahawa mereka berhak kepada tiga mata caj perkhidmatan seperti yang didakwa. Responden juga tidak mengemukakan sebarang keterangan berkenaan nilai setiap mata caj yang dituntut bagi setiap bulan. Seterusnya, responden hanya mengemukakan penyata gaji bagi sebahagian bulan yang dituntut, tetapi bukan bagi semua bulan yang dituntut. Berkenaan bulan-bulan yang tidak disertakan penyata gaji, tiada keterangan menunjukkan bahawa jumlah yang dituntut oleh semua responden benar-benar telah ditolak daripada gaji mereka (lihat perenggan 24–25, 29, 31 & 33).

(2) Mahkamah Perusahaan gagal untuk memahami bahawa lapan orang responden telah dengan jelas bersetuju dengan terma-terma yang terkandung dalam surat bertarikh 1 Oktober 2013 melalui tandatangan mereka di bahagian penerimaan dalam surat masing-masing. Penstrukturan semula gaji responden dalam perkara ini bukan dilakukan secara sebelah pihak. Pegawai pengerusi Mahkamah Perusahaan telah melakukan kesilapan dari segi undang-undang dan fakta apabila gagal mempertimbangkan keterangan perayu bahawa telah dijelaskan kepada responden sebelum menandatangani kontrak pekerjaan mereka bahawa perayu akan menolak sebahagian daripada hak caj perkhidmatan mereka untuk memenuhi kadar gaji minimum pada masa itu. Oleh kerana lapan orang responden telah secara jelas bersetuju dengan terma-terma tersebut, maka mereka terikat dengan terma-terma yang terkandung di dalamnya (lihat perenggan 37–38, 40 & 42).

(3) Mahkamah Perusahaan gagal untuk memahami bahawa baki 16 orang responden telah bersetuju secara perlakuan terhadap penstrukturan semula gaji dalam tahun-tahun berikutnya melalui tandatangan mereka di bahagian penerimaan dalam surat masing-masing. Jika baki 16 orang responden berhak kepada tiga mata caj perkhidmatan, mereka pasti akan menyedari serta-merta sekiranya perayu telah membuat potongan terhadap caj perkhidmatan mereka. Walau bagaimanapun, tiada sebarang aduan dibuat oleh mereka terhadap perayu dan mereka terus bekerja dengan perayu sehingga pemfailan tuntutan mereka di Mahkamah Perusahaan (lihat perenggan 44–45).

(4) Mahkamah Perusahaan telah terkhilaf dari segi undang-undang apabila memutuskan bahawa perayu telah membuat potongan yang tidak sah daripada gaji responden, yang merupakan pelanggaran terhadap s 24 Akta Kerja 1955, dan oleh itu persetujuan responden terhadap perkara tersebut dianggap tidak relevan. Mahkamah Perusahaan telah terkhilaf mentafsir caj perkhidmatan sebagai sebahagian daripada 'gaji' (seperti

yang ditakrifkan di bawah s 2 Akta Kerja 1955). Mahkamah Perusahaan juga telah gagal dari segi undang-undang apabila tidak memberi kesan dan/atau mengambil kira Garis Panduan Pelaksanaan Perintah Gaji Minimum 2012 yang menetapkan kaedah penstrukturan semula gaji dalam sektor hotel, di mana dinyatakan bahawa dalam sektor hotel yang melaksanakan kutipan caj perkhidmatan, majikan boleh menukar sebahagian atau keseluruhan caj perkhidmatan yang diperuntukkan untuk diagihkan kepada pekerja, bagi membentuk sebahagian daripada gaji minimum. Perayu tidak sepatutnya dipersalahkan kerana bergantung kepada Garis Panduan tersebut. Penstrukturan semula gaji responden bagi memenuhi gaji minimum telah dibuat dengan pengetahuan dan persetujuan penuh responden. Tuntutan responden adalah pemikiran kemudian memandangkan tiada aduan dibuat oleh responden sepanjang tempoh perkhidmatan mereka dengan perayu (lihat perenggan 54–56 & 58–59).

(5) Mahkamah Perusahaan telah terkhilaf dari segi undang-undang apabila gagal mempertimbangkan keputusan dalam kes *Wan Noor Rizal bin Ali and Others v Le Meridien Kuala Lumpur owned by Daito Asia Development (M) Sdn Bhd* (Summons Case No KBR/11401/2020/0281) (unreported) dan/atau memberi alasan mengapa tidak merujuk kepada keputusan kes tersebut walaupun isu utama yang sama telah dibangkitkan dalam kes itu, dokumen yang sama telah dikemukakan (terutamanya surat-surat berkenaan penstrukturan semula gaji), dan syarikat/majikan yang sama juga terlibat dalam kes tersebut (lihat perenggan 63).

(6) Semasa prosiding di Mahkamah Perusahaan, didapati bahawa beberapa tuntutan telah dikemukakan di luar had masa yang ditetapkan dan penyata gaji yang dikemukakan adalah tidak lengkap. Walau bagaimanapun, faktor-faktor ini tidak diambil kira oleh Mahkamah Perusahaan (lihat perenggan 64).]

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770; [1995] 1 MLRA 546; [1995] 3 CLJ 639; [1995] 3 AMR 2375, CA (folld)

Chin Well Fasteners Co Sdn Bhd v Sampath Kumar Vellingiri & Ors [2006] 1 MLJ 117; [2005] 2 MLRA 89; [2005] 4 CLJ 394, CA (refd)

Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia [2021] 3 MLJ 466; [2021] 4 CLJ 775; [2021] 2 MLRA 696; [2021] 4 AMR 841; [2021] 2 MELR 84, FC (distd)

Wan Noor Rizal bin Ali and Others v Le Meridien Kuala Lumpur owned by Daito Asia Development (M) Sdn Bhd (Summons Case No KBR/11401/2020/0281) (unreported) (refd)

Legislation referred to

Employment Act 1955 ss 2, 24
Evidence Act 1950 ss 101, 102
Limitation Act 1953
Minimum Wages Order 2012 s 6
National Wages Consultative Council Act 2011

Vijayan Venugopal (Jamie Goh Moon Hoong with him) (Shearn Delamore & Co) for the appellant.
Bala Murali Ramasamy (RB Murali & Assoc) for the respondents.

Ahmad Kamal J:

INTRODUCTION

[1] The Appeal No WA-16–12–06 of 2023 ('Appeal 12') and Appeal No WA-16–13–06 of 2023 ('Appeal 13') relate to what are essentially identical facts. Appeal 12 is fixed to be heard together with Appeal 13.

[2] It was the case of the respondents that the deduction from the service charge to top up basic salary was unlawful and the same (subject to the Limitation Act 1953) ought to be paid back.

[3] The presiding officer of the Labour Court heard the respondents, considered the evidence, the position of the law as stated by the Federal Court in the case of *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia* [2021] 3 MLJ 466; [2021] 4 CLJ 775; [2021] 2 MLRA 696; [2021] 4 AMR 841; [2021] 2 MELR 84 and ruled that the deductions were made unlawfully and the hotel (appellant) was ordered to pay back the monies so deducted.

[4] The present appeals have been filed against the decision of the presiding officer of the Labour Court given on 23 May 2023.

[5] The appellant claims that the presiding officer of the Labour Court committed a serious error of law and in fact.

[6] After the hearing, I allowed the appellant's appeals. The grounds for my decision appear below.

A BACKGROUND OF THE APPEAL

[7] For Appeals 12 and 13, a total of 37 individuals have filed their respective claims at the Labour Court whereby they alleged that the appellant underpaid their service charge.

B

[8] Out of the 37 claims, ten claims were struck out by the Labour Court during the proceedings on 10 August 2022, 6 September 2022 and 21 September 2022 as the individuals failed to attend the Labour Court proceedings.

C

[9] For ease of reference, the date of commencement of employment, reference during the Labour Court proceedings and the sums ordered by the Labour Court for the respondents in the instant appeal are set out below:

D

Appeal 12

E

No	Name of respondent	Date of commencement of employment	Reference during Labour Court proceedings	Sums ordered by the Labour Court (RM)
1	Zulkarnain bin Hussin	9 July 2018	P22	13,016.30
2	Nurul Nadia bt Ramli	26 January 2016	P20	21,209
3	Evelone Juin	6 March 2017	P11	19,866

F

Appeal 13

G

No	Name of respondent	Date of commencement of employment	Reference during Labour Court proceedings	Sums ordered by the Labour Court (RM)
1	Fairuz Azwan bin Mohd Ali	2 September 2014	P2	34,224.30
2	Mohd Daniel Azreen bin Mohd Radzuan	18 August 2014	P1	27,610.30
3	Wan Mohammad Norhisyam Azuan bin Wan Rosdi	23 November 2015	P3	27,310.30

H

I

No	Name of respondent	Date of commencement of employment	Reference during Labour Court proceedings	Sums ordered by the Labour Court (RM)
4	Mohd Shaiful Nizam bin Mohd Noor	7 March 2016	P4	25,850
5	Mohd Zulfiqar bin Nawi	14 March 2016	P5	24,310.30
6	Rahimah bt Deraman	1 July 2013	P6	33,810.30
7	Ibrahim bin Muhamad	22 April 2013	P7	27,210.30
8	Mohd Amir bin Mat Roni	1 November 2010	P8	25,902.30
9	Muhammad Najib bin Abdul Aziz	7 May 2018	P9	11,810.30
10	Muhammad Khairul Hafizi bin Zaini	29 February 2016	P10	26,660.30
11	Mohd Fitri bin Abdul Ghani	9 February 2015	P12	28,734
12	Mohammad Amran Sahab bin Nordin	15 December 2014	P13	32,310.30
13	Mohd Sahrul Naim bin Busu	26 July 2011	P14	27,974.30
14	Mohd Faizal bin Sulaiman	17 November 2014	P15	33,210.30
15	Aniah bt Mamat	4 July 2011	P16	31,104.30
16	Rashidah bt Ramli	9 June 2008	P17	10,089
17	Crisman bin Nasra	14 August 2017	P18	17,860.30
18	Khairunnissa bt Baki	6 July 2015	P19	23,460.30
19	Abdul Khair bin Walimin	16 June 2008	P21	17,310.10
20	Noor Azrul bin Noordin	13 June 2017	P23	18,960.30

No	Name of respondent	Date of commencement of employment	Reference during Labour Court proceedings	Sums ordered by the Labour Court (RM)
21	Anis Satira Surianny bt Mat Jusoh	3 September 2018	P24	8,010.30
22	Abdul Rahman bin Ghazali	15 April 2013	P25	37,110.30
23	Muhammad Syamir bin Abdul Latib	22 February 2016	P26	14,400
24	Mohd Ridhuan bin Sazali	5 September 2016	P27	25,560.30

THE BACKGROUND FACTS

[10] The background facts herein are adopted with and/or without modifications from the written submission of the appellant and can be summarised as follows:

[11] The guidelines on the implementation of the Minimum Wages Order 2012 ('the MWO') sets out the method of restructuring the wages for the hotel sector which provides that for the hotel sector where the service charge collection is implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages.

[12] With the coming into effect of the MWO 2012, the appellant decided to implement the MWO 2012 by restructuring the employees' wages.

[13] By letter dated 1 October 2013, the appellant had informed eight respondents ('the eight respondents') of the implementation of the MWO 2012. The eight respondents accepted the letter and the terms contained therein by virtue of their signature at the acceptance portion of the respective letters as follows:

No	Name of respondent	Page in D1 (appellant's bundle of documents)/records of appeal (RR)
1	Ibrahim bin Muhamad	3–4/468–469 RR (3)
2	Rashidah bt Ramli	12–13/477–478 RR (3)
3	Rahimah bt Deraman	20–21/485–486 RR (3)

No	Name of respondent	Page in D1 (appellant's bundle of documents)/records of appeal (RR)
4	Mohd Amir bin Mat Roni	30–31/495–496 RR (3)
5	Abdul Rahman bin Ghazali	33–34/498–499 RR (3)
6	Mohd Sahrul Naim bin Busu	43–44/508–509 RR (3)
7	Abdul Khair bin Walimin	51–52/516–517 RR (3)
8	Aniah bt Mamat	57–58/522–523 RR (3)

[14] Meanwhile, for the remaining 16 respondents ('the remaining 16 respondents'), the appellant informed them of the addition to their basic salary in accordance with the implementation of the MWO 2012 in the relevant years. These remaining 16 respondents had accepted the letter and the terms contained therein by virtue of their signature at the acceptance portion of the respective letters. As an example, for P4 please refer to the letters on pp 6, 7 and 8 of D1 (pp 471, 472 and 473 of RR (3)) pp 80 and 81 of D1 (pp 568 and 569 of RR (3)).

[15] The respondents filed their respective claims for the balance of service charges at the Labour Office in the Federal Territory of Kuala Lumpur. The matter was subsequently heard by the presiding officer of the Labour Court.

[16] The presiding officer of the Labour Court after that handed down a decision dated 23 May 2023 whereby the appellant was ordered to pay the respondents a total sum of RM644,884.10 being the balance of the service charges due to the respondents.

SUBMISSION OF THE PARTIES

[17] The appellant submits that the presiding officer of the Labour Court failed to properly evaluate the entirety of evidence that was adduced before her.

[18] In gist, the appellant submits that the presiding officer of the Labour Court:

(a) erred in law in failing to appreciate that the respondents failed to prove the requisite elements of their case;

(b) misconstrued s 24 of the Employment Act 1955;

(c) misconstrued the Federal Court decision in the case of *Crystal Crown*;

(d) failed to even consider the decision of Summons Case No KBR/11401/2020/0281 where the factual matrix, parties involved, issues and documentary evidence were identical; and

(e) erred in allowing the respondents' claim although some claims were time-barred and some of the respondents failed to produce payslips to support their claims.

[19] The respondents in opposing the appeal, submit as follows:

(a) the primary complaint of the respondents before the presiding officer of the Labour Court is that the appellant deducted a certain fixed amount of money monthly from their service charge to top up and meet the mandatory minimum wages law. The respondents argued and obtained a ruling that the said deductions are unlawful and the money so deducted ought to be paid back;

(b) the Federal Court in *Crystal Crown* held that the hoteliers could not utilise the service charge imposed on bills to customers to meet the statutory minimum wage of their employees;

(c) according to the respondents, based on the *Crystal Crown*, a payment from the customers of the hotel directly to the employees of the hotel and the hotel does not have any right to use the money to top up salary. According to the apex court, the hotel only holds the service charge paid by the customer in trust for the employees and must pay the same;

(d) the Federal Court went further to clarify any doubt by holding that such a deduction is contrary to the intention of the Parliament and the act itself. The court held that utilisation of service charges to pay minimum wages is akin to paying the employee with their own money;

(e) furthermore, the Federal Court opined that as a service charge is a payment collected from third parties, it does not belong to the hotel. In fact, when a customer pays the service charge as part of the bill, the ownership of monies is immediately transferred to and lies with the employees who are eligible to receive those monies. The hotel merely holds the monies in trust until distribution to the beneficiaries — the eligible employees. As the service charge does not at any time belong to the hotel, the hotel is not entitled in law to appropriate and utilise it to meet its statutory obligation prescribed under the National Wages Consultative Council Act 2011 ('the NWCCA') and the MWOs;

(f) in the present case, the appellant admits that the respondents are entitled to payment of service charge, and it deducted a portion of the same to top up basic salary to meet minimum wages order. The witness for the appellant admitted that a fixed amount from the service charge was deducted every month consistently to pay minimum wage. However, the appellant attempted to justify the deduction, by claiming that the deduction was made upon consent by the respondents. The witness further testified that eight respondents gave written consent for deduction meanwhile 19 others consented to the deduction by conduct

because they did not protest the deduction while they worked there;

(g) according to the respondents, the eight respondents who signed the letter of consent testified that the letter was not signed willingly. The respondents were not made aware that they had the option to refuse the deduction;

(h) the appellant takes the stand that the other 18 respondents gave their consent by way of conduct by not protesting the deductions. There is no evidence to show that there ever was communication between the appellant and the 18 respondents on the deductions contrary to the letter which was signed by the earlier employees such as the eight respondents. The appellant did not lead any evidence to show that these respondents were given any explanation on the deduction for them to make a choice; and

(i) the consent, be it by writing or conduct is irrelevant and void ab initio because a fact or an agreement contrary to the law is unenforceable.

THE DECISION OF THE COURT

[20] Having perused the evidence produced before the presiding officer of the Labour Court, I find that the presiding officer has failed to exercise proper or sufficient appreciation of the evidence in arriving at its decision.

FAILED TO APPRECIATE THAT THE RESPONDENTS FAILED TO PROVE REQUISITE ELEMENTS OF THEIR CASE

[21] It is to be noted that the respondents claimed that the appellant had underpaid their service charges, thus the burden and onus to prove lies with the respondents (see: ss 101 and 102 of the Evidence Act 1950).

[22] Hence, in order to prove their case, the respondents must prove the requisite elements of their case, namely:

(a) that they were entitled to three service charge points;

(b) that they must adduce evidence reflecting the value of each service charge point in respect of each month they claimed for; and

(c) that the amounts claimed by them were deducted from their wages.

ENTITLEMENT TO THREE SERVICE CHARGE POINTS

[23] The respondents relied on a document entitled 'Benefit Program' in their respective bundle of documents which consists of their employment contracts to prove that they are entitled to three service charges.

[24] I find that there was no evidence adduced by the respondents to show how many service charge points they were entitled to. If one refers to pp 121–125 C1/pp 700–703 of RR (4) under clause four 'remuneration', it only stated that monthly wage consists of RM900 plus service charge and did not state that he was entitled to three service charge points.

[25] Further, having perused the employment contracts, for example on pp 62–64 C1/pp 618–620 RR (4), pp 44–45 C3/pp 1087–1088 RR (6); pp 57–61 C1/pp 613–617 RR (4) and pp 39–43 C3/pp 1082–1086 RR (6), I find that the said employment contracts do not make any reference to any enclosures and does not contain any signature.

[26] The respondents who had produced the 'Benefit Program' claimed that the said document was given to them at the same time as their employment contracts. I find that the Labour Court erred when it accepted the respondents' claims as:

(a) there was no reference to the 'Benefit Program' or any enclosure in their employment contracts;

(b) the 'Benefit Program' was not issued on the letterhead of the appellant company;

(c) there was no signature of the appellant's officer on the 'Benefit Program';

(d) apart from the fact that the font in the 'Benefit Program' for P2 and P18 was different, the font in the 'Benefit Program' produced by P18 differs from the font in his employment contracts; and

(e) no questions were posed to the appellant's witness that the 'Benefit Program' was annexed to the employment contracts of those who produced the said document.

[27] The respondents did not adduce any evidence to show that the 'Benefit Program' was given at the same time as their employment contracts. I noticed that the type of paper on which the 'Benefit Program' was printed differs from the paper on which their employment contracts were printed. It is apparent that the 'Benefit Program' was of a different format compared to their employment contracts: (a) during cross-examination, P11 admitted that the 'Benefit Program' was not given together with his employment contract and in fact, it was not given to him. P11 agreed that his employment contract did not make any reference to the 'Benefit Program' as follows:

(a) during cross-examination, P11 admitted that the 'Benefit Program' was not given together with his employment contract and in fact, it was not given to him. P11 agreed that his employment contract did not make any reference to the 'Benefit Program' as follows:

S: Rujuk soalan 12, ekshibit C3 mukasurat 153, 153(a) dan 154, dokumen ini tidak diberikan bersama-sama dengan kontrak perkhidmatan?

J: Ya, diberi berasingan.

S: Terma-terma dan syarat perkhidmatan diberikan merujuk mukasurat 149, 151(a), 152, 152(1). Adakah ini terma-terma dan syarat yang diberikan?

J: Setuju.

S: Adakah apa-apa rujukan lampiran dinyatakan di dalam kontrak?

J: Tiada.

S: Lihat mukasurat 153 dan 154, adakah diberikan kepada Encik?

J: Tidak.

(see: p 264 of RR (2))

(b) during cross-examination, P22 confirmed that his employment contract did not make any reference to the 'Benefit Program', conceded that it was a separate document and that he was the one who stapled those two documents together as follows:

S: Dalam mukasurat 121 hingga 125 adakah rujukan untuk benefit program?

J: Tiada.

S: Adakah mukasurat 121 hingga 126 atau mukasurat 126 hingga 128 diasingkan?

J: Diasingkan.

S: Adakah salinan asal mukasurat 121 hingga 128?

J: Betul.

S: Siapakan yang 'stapler' dokumen mukasurat 121 hingga 128?

J: Saya.

(see: p 367 of RR (2))

[28] Even if the 'Benefit Program' had been given together with the employment contract, it cannot be said that the respondents were entitled to three service charge points. This is because, if one refers to the 'Benefit Program' for P2 on p 62 C1 (p 618 of RR (4)) under the 'service charge' clause, it only states 'each associate in levels 4B to 1 is entitled to three points or maximum is four points'. Based on p 57 C1 (p 613 of RR (4)), P2's position is 'Laundry Attendant III', that is, level three. Therefore, I am of the view that the 'service charge' clause on p 62 C1 (p 618 of RR (4)) does not apply to P2. It is also pertinent to note that the respondents did not testify on the level which their positions were at.

[29] More importantly, I find that the payslips produced by the respondents

(save for those in category one) for example P2 (p 65 C1/p 621 of RR (4)) and P21 (p 238 C1/p 798 of RR (4)), the payslip merely states (apart from other allowances) the 'basic salary' and 'service charge' components. The payslip does not specify how many service charge points they were entitled to. It should also be taken into account that the appellant's witness had testified that the value of the service charge point given to each employee is not the same (see: p 390 of RR (2)). In this regard, there was no evidence adduced by the respondents (save for those in category one) that they were entitled to three service charge points as alleged by them.

[30] The respondents further claimed that they were verbally informed by the appellant's HR personnel, namely Chin Seng/Soo Ling/Chong that they were entitled to three service charge points at the time of commencement of their employment. Unfortunately, the respondents did not call Chin Seng/Soo Ling/Chong to testify in the Labour Court in support of their allegations.

THE VALUE OF EACH SERVICE CHARGE POINTS CLAIMED FOR EACH MONTH

[31] The respondents, did not adduce any evidence regarding the value of each service claimed for each month. The respondents relied on photographs which purportedly reflect the value of the service charge points on pp 3 and 5 C3 (pp 1073 and 1074 of RR (6)). However, I find the authenticity of these photographs which were adduced during the Labour Court proceedings doubtful.

[32] This is because the respondents testified that they did not know when the photographs on pp 3 and 5 C3 (pp 1073 and 1074 of RR (6)) during the Labour Court proceedings the bundle was referred to as C2) were taken and that they were not in the area when those photographs were taken. Their evidence during cross-examination can be gleaned as follows:

P11

S: Rujuk ekshibit x2 mukasurat 3, adakah awak bersama-sama dengan orang yang mengambil gambar?

J: Tidak.

S: Bagaimana anda tahu gambar ini diambil oleh Wan Nor Hisyam?

J: Orang lain yang beritahu.

S: Adakah nampak orang ini mengambil gambar?

J: Tidak.

(see: p 267 of RR (2)) P20)

S: Rujuk ekshibit 2 mukasurat 3, siapa mengambil gambar ini?

J: Tidak Pasti.

S: Adakah Puan berada di sana semasa gambar diambil?

J: Tidak.

(see: p 347 of RR (2))

THE SUMS CLAIMED BY THE RESPONDENTS THAT WERE DEDUCTED FROM THEIR RESPECTIVE WAGES

[33] On this issue, the respondents have produced their payslips for some of the months claimed by them, but not for all the months which were claimed by them. In respect of the months for which payslips were not produced, there was no evidence that the sums claimed by all the respondents were actually deducted from their wages. The respondents' evidence during cross-examination can be gleaned from the following:

P11

S: Sila sahkan mukasurat 155 adalah payslip Mac 2017?

J: Ya.

S: Setuju dengan saya tiada potongan RM500.00 dalam payslip?

J: Tiada.

S: Tunjukkan payslip April 2017?

J: Hilang.

S: Tunjukkan payslip May 2017?

J: Mukasurat 157.

S: Adakah dinyatakan potongan RM500.00?

J: Tiada.

S: Setuju dengan saya, tiada jumlah potongan RM500.00 dari Jun 2012 hingga Disember 2012?

J: Ya, betul.

S: Tuntutan Encik dari Januari hingga Julai 2020. Mana?

J: Tiada.

S: Adakah dokumen lain yang menunjukkan potongan RM500.00 dari servis caj bagi bulan Mac 2017?

J: Tiada.

S: Setuju dengan saya, tiada bukti di hadapan Mahkamah bahawa RM500.00 dipotong dari servis caj mulai Mac 2017 hingga Julai 2020?

J: Setuju.

(see: p 265–266 of RR (2))

[34] I find that the respondents' counsel did not cross-examine the appellant's witness on the appellant's ability to produce those payslips. Apart from that, the respondents' counsel did not show the payslips produced in the respondents' bundle of documents to the appellant's witness to verify those payslips.

[35] Further, the respondents' counsel did not make any request to the appellant to produce the payslips for the months in which the payslips were not submitted by the respondents.

[36] I am of the view that since the burden of proof lies with the respondents, they should have adduced evidence to support their claims.

THE RESPONDENTS CONSENTED TO THE DEDUCTION OF THEIR SERVICE CHARGE ENTITLEMENT TO MEET THE MINIMUM WAGE RATE

[37] Having perused the evidence adduced, I find that the presiding officer of the Labour Court failed to appreciate that the eight respondents had expressly consented to the terms contained in the letter dated 1 October 2013 by virtue of their signature at the acceptance portion of the respective letters as can be seen on pp 3–4, 12–13, 20–21, 30–31, 31–34, 43–44, 51–52, and 57–58 D1 (pp 468–469, 477–478, 485–486, 495–496, 498–499, 508–509, 516–517 and 522–533 RR (3)).

[38] This court finds that the restructuring of the respondents' wages in this matter was not done unilaterally. The appellant's witness testified vide D2 that a townhall session was held in both Malay and English where there were Q & A sessions and the employees were given copies of the letters in relation to the implementation of the MWO 2012 by the appellant company:

> Q9 Are you able to confirm whether the employees who expressly consented to the restructuring of their wages in 2013, were briefed on the redistribution of the value of their service charge points to top-up their basic wages?
>
> Yes, I can confirm.
>
> 10 When were they briefed on the redistribution of the value of their service charge points to top-up their basic wages?
>
> We had several briefing sessions in October 2013.
>
> 11 Where were the briefing held?
>
> They were held at Broadrick, the Hotel's Function Room on Level 6.

12 Please state the names and designation of the Company representatives who were present at the briefings.

I was present for the briefings. Apart from myself, Ms Jaclyn Low — Director of Human Resources, Mr Harvey Thompson — General Manager, Encik Fauzy Wahab — Hotel Manager, Mr Sukhvindar Singh — Director of Finance, Ms Lam Sook Pin — Paymaster and two (2) representatives from Human Resources (Ms Cheah Soo Ling and Mr Toh Chin Seng) were present. Department Heads of the respective departments were also in attendance.

13 What transpired at the briefings?

We explained to our employees on the implementation of the Minimum Wages Order 2012 and that the Hotel will be restructuring their compensation package with effect from 1 October 2013. It was also explained in detail on the calculation as to how the value of their service charge points would be redistributed to 'top up' their basic wages to meet the Minimum Wages Order 2012 of RM900.00 basic salary. We had Encik Fauzy, our ex-Hotel Manager, explain the presentation in Bahasa Melayu to ensure full understanding by all employees. There was ample time for Q & A for all employees to ask questions; those who did not have any questions consented and signed the 'Implementation of the Minimum Wages Order, 2012 Restructured Minimum Wage to be Paid W. E. F 1 October 2013' letters on the same day they were briefed.

(see: pp 435–436 of RR (2))

[39] I find that the testimony of the appellant's witness was not challenged during cross-examination by the respondents' counsel. Therefore, I view that the foregoing evidence should have been accepted by the Labour Court based on the Court of Appeal case of *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770; [1995] 1 MLRA 546; [1995] 3 CLJ 634; [1995] 3 AMR 2375.

[40] The presiding officer of the Labour Court erred in law and in fact when she failed to consider the appellant's evidence that it was already explained to the respondents prior to the execution of their employment contracts that the appellant would be deducting part of their service charge entitlement to meet the minimum wage rate at that time.

[41] It is trite that the party signing a document is bound by the conditions contained in it, whether or not he has read or understood it. In the case of *Chin Well Fasteners Co Sdn Bhd v Sampath Kumar Vellingiri & Ors* [2006] 1 MLJ 117; [2005] 2 MLRA 89; [2005] 4 CLJ 394 the Court of Appeal states that:

> *The fact that the defendant's representative did not appreciate its contents when he signed it does not affect its validity. It has been held that in the absence of fraud or misrepresentation, a person is bound by a writing to which he has put his signature,* whether he has read its contents or has chosen to have them unread (see *L'Estrange v Graucob* [1934] 2 KB 394; *Serangoon Garden Estate Ltd v Marion Chye* [1959]

MLJ 113; *Majumder v AG of Sarawak* [1966] 1 MLJ 41). The defendant is therefore bound by the contract of employment. (Emphasis added.)

[42] Since the eight respondents had expressly consented to the terms contained in the letter dated 1 October 2013 by virtue of their signature at the acceptance portion of the respective letters, therefore they are bound by the terms contained therein.

[43] The eight respondents confirmed that they were not threatened or pressured to sign the letter dated 1 October 2013. The eight respondents also confirmed that did not make any objection (whether in writing or orally) to the deduction of their service charges and continued to work with the appellant after 1 October 2013. As an example, this court refers to the following evidence during cross-examination:

P7

S: Bila sedar ada potongan servis caj anda diam sahaja dan tak buat apa-apa bantahan?

J: Ya.

S: Semasa ietak jawatan adakah anda membangkitkan isu tidak sukarela tentang potongan servis caj untuk 7 tahun atau membuat apa-apa bantahan

J: Tidak.

S: Mukasurat 5 D1. Adakah Encik menerima dokumen ini?

J: Ya.

S: Adakah itu tandatangan Encik di bawah surat?

J: Ya.

S: Menerima surat ini lebih kurang pada 3.2.2020?

J: Lebih kurang.

S: Isu ini juga pasal top up servis caj?

J: Ya.

S: Bila terima surat ini adakah menimbulkan isu bahawa tidak sukarela?

J: Tidak.

S: Diam sahaja?

J: Ya.

(see: pp 201 and 203 of RR (2))

REMAINING 16 RESPONDENTS

[44] I view that the presiding officer of the Labour Court failed to appreciate that the remaining 16 respondents had consented by conduct to the restructuring of the wages in the consequent years vide their signature at the acceptance portion of the respective letters (see: P27 (pp 68–69 D1/pp 533–534 of RR (3)).

[45] It is pertinent to note that the respondents and the appellant's witness testified that the appellant did not hide the value of the service charge point and that the value of the service charge point was clearly displayed on the appellant's notice board. Hence, I am of the view if the remaining 16 respondents were entitled to three service charge points they would know immediately if the appellant had deducted their service charges. However, I find that no complaint was made by them against the appellant and they continued working with the appellant until the filing of their claims at the Labour Court.

[46] More importantly, I notice that the respondents did not make any complaint nor file any case that the appellant had purportedly deducted their service charges throughout the tenure of their employment with the appellant or as soon as possible thereafter. Their claims only arose for the first time when they filed their claims at the Labour Office in 2020. This was confirmed by them during cross-examination:

P11

S: Arahan saya ialah nilai servis caj poin tidak disembunyikan oleh syarikat setiap bulan. Setuju?

J: Setuju.

S: Pada setiap bulan syarikat pamerkan nilai servis caj poin dengan jelas di atas papan. Setuju?

J: Setuju

S: So awak tahu nilai servis caj poin setiap bulan?

J: Ya.

S: So dari tarikh awak mula bekerja 6.3.2017, syarikat ada buat potongan bagi servis caj untuk awak?

J: Ya.

S: Dan awak tahu ini untuk setiap bulan syarikat buat potongan sejak awak mula kerja?

J: Ya.

S: Sejak 2017 hingga Julai 2020, adakah anda membuat sebarang bantahan bagi potongan ini?

J: Ya.

S: So awak setuju bahawa semasa berkhidmat dalam syarikat, awak tahu bahawa potongan dibuat dari servis caj?

J: Setuju.

S: Dan awak ada pengetahuan ini sepanjang perkhidmatan dalam syarikat?

J: Ya.

(see: pp 266–267 of RR (2))

P27

S: S & J 13, 14 & 15 P-27(a). Setuju — pada semua masa bekerja dengan syarikat, syarikat telah pamerkan dgn jelas nilai servis caj pada akhir setiap bulan di atas papan notis?

J: Setuju.

S: Setuju — syarikat tidak menyembunyikan nilai servis caj pada setiap bulan?

J: Setuju.

S: Setuju — memang tahu potongan dibuat dari servis caj sejak mula bekerja dengan syarikat?

J: Tahu.

S: Pada 4 tahun ini adakah anda membantah secara bertulis kepada syarikat tentang potongan dari servis caj?

J: Tiada.

S: Pada 4 tahun ini adakah anda membantah secara lisan kepada syarikat tentang potongan dari servis caj?

J: Tiada.

S: Pada semua masa anda bekerja adakah mana-mana pihak syarikat yang buat ugutan atau paksaan berkenaan isu potongan dari servis caj?

J: Tiada.

S: Dalam Penyata Soal Jawab anda kata tidak menimbulkan isu ini kerana khuatir. Cadang — perasaan khuatir ini merupakan satu andaian saja.

MISCONSTRUED THE DECISION OF CRYSTAL CROWN

[47] Having perused the facts in the Federal Court case of *Crystal Crown* and the instant case, I find that it can be distinguished.

[48] In *Crystal Crown*, the dispute arose during the collective bargaining process and the company *Crystal Crown* had proposed to unilaterally change the terms of employment via the collective bargaining process. In a collective

bargaining process, the terms must be agreed by both parties, ie the employer and the union, failing which, the dispute will be referred to the Industrial Court for arbitration.

[49] However, in this instant case, the respondents were not represented by a union. In the absence of a union, the negotiation on the restructuring of the wages would be conducted between the employer and the individuals themselves.

[50] In this case, the appellant, in accordance with the provisions of the Guidelines for the Implementation of the MWO 2012, had informed the respondents of the implementation and that their wages would be restructured the revised terms of their employment vide the letters issued to them.

[51] I find that all of the respondents consented to the foregoing by virtue of their signature at the acceptance portion of the respective letters and none of them raise any issue on the restructuring of their wages or any complaint on the deduction of their wages throughout the tenure of their employment. Therefore, I view that the presiding officer of the Labour Court erred in law in failing to conclude that the respondents' claims are an afterthought as they did not raise any grievances on the deduction of part of their service charge entitlement to meet the minimum wage rate throughout their employment with the appellant for several years.

[52] Section 6 of the MWO 2012 stipulates:

> Negotiation for restructuring of wages
>
> Nothing in this Order shall be construed as preventing the employer and the employee, or the trade union, as the case may be, from negotiating on the restructuring of wages under section 7B of the Employment Act 1955, section 9B of the Sabah Labour Ordinance or section 10B of the Sarawak Labour Ordinance, as the case may be, before this Order comes into operation in relation to the employer concerned provided that:
>
> (a) the restructured basic wages to be paid to the employee shall be in accordance with the minimum wages rates specified in this Order;
>
> (b) the restructured wages shall not be less favourable than the employee's existing wages;
>
> (c) the restructured wages shall not be less than the amount of wages earned by the employee as agreed in the contract of services before the restructuring of the wages;
>
> (d) the restructuring of the wages shall only involve the payment for work done during the normal hours of work of the employee; and

A (e) the restructuring of the wages shall not cause the employee to lose any remuneration specified under paragraphs (a) to (f) of the definition of 'wages' in section 2 of the Employment Act 1955, section 2 of the Sabah Labour Ordinance and section 2 of the Sarawak Labour Ordinance which the employee would be entitled to under the contract of service.

B

[53] In the present case, the restructuring of the respondents' wages to meet the minimum wage was done with their knowledge and consent. It is a simple case of an offer and acceptance and the respondents have consented to the same, be it expressly or by conduct. At all times, the respondents had the C opportunity to accept or decline the terms and conditions offered by the appellant.

[54] Based on the foregoing, I am of the considered view that the presiding officer of the Labour Court erred in law in ruling that the appellant had made D unlawful deductions from the respondents' wages in breach of s 24 of the Employment Act 1955 and hence their consent to the same was irrelevant.

[55] In so ruling, I find that the presiding officer of the Labour Court E misconstrued service charge as being part of 'wages' (defined under s 2 of the Employment Act 1955). Further, in concluding that service charge is part of 'wages', the presiding officer of the Labour Court failed to appreciate that the respondents' wages would be in excess of RM2,000 which in turn would bring them outside the purview of the Employment Act 1955.

F

[56] In this case the presiding officer of the Labour Court erred in law in failing to give effect to and/or have regard to the Guidelines on the Implementation of the MWO 2012 which sets out the method of restructuring the wages for the hotel sector in which it is provided that for the hotel sector G where the service charge collection is implemented, the employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages.

[57] Paragraph 3(v) of the guidelines specifically sets out the method of H restructuring of the wages for the hotel sector, as follows:

> Subject to negotiations between the employer and employee, the method of restructuring of wages is based on the following conditions:
>
> For the hotel sector where the service charge collection is implemented, the I employer may convert all or part of the service charge meant for distribution to the employee, to form part of the minimum wages;

[58] Given the above guidelines which were issued with the specific intention to cater for hotel employees such as the respondents, it is my view

that the presiding officer of the Labour Court erred in law in allowing the respondents' claims. The appellant should not be faulted for having relied on the guidelines.

[59] Given the above, I view that the restructuring of the respondents' wages to meet the minimum wage was done with the respondents' full knowledge and consent. This was never a case of the appellant underpaying the respondents their service charges as alleged by the respondents. The presiding officer of the Labour Court erred in law in failing to conclude that the respondents' claims are an afterthought as the respondents did not raise any grievances on the matter during the tenure of their employment with the appellant.

THE PRESIDING OFFICER OF THE LABOUR COURT FAILED TO CONSIDER THE DECISION IN SUMMONS CASE NO KBR/11401/2020/0281

[60] In Director General of Labour case *Wan Noor Rizal bin Ali and Others v Le Meridien Kuala Lumpur owned by Daito Asia Development (M) Sdn Bhd* (Summons Case No KBR/11401/2020/0281) (unreported), four complainants filed claims at the Labour Court for the arrears in the payment of service charge points on 20 February 2020.

[61] I find that there are similarities between *Wan Noor Rizal*'s, case and the present case:

(a) both cases involved the same company;

(b) the counsels representing the complainants and company in both cases were the same;

(c) the essence and main issues in both cases were the same, that is, the restructuring of wages to meet the minimum wage rate and whether the employees had consented to the deduction of their service charges;

(d) documents with the same contents were issued, especially the letters relating to the restructuring of wages; and

(e) both cases involved the same categories of employees, ie employees who had expressly consented to the deduction of the service charges and employees who had consented to the deduction of the service charges by conduct.

[62] It should be noted that the Labour Court in *Wan Noor Rizal*'s dismissed the complainants' claims therein.

[63] In the present instance, I find that the presiding officer of the Labour Court erred in law in failing to consider the decision in *Wan Noor Rizal* and/or

provide reasons for not referring to the decision of the said case although the same main issues were ventilated in the said case, the same contents of documents were adduced (especially the letters on the restructuring of wages) in the said case and the same company/employer was involved in the said case.

THE PRESIDING OFFICER ERRED IN ALLOWING THE RESPONDENTS' CLAIM ALTHOUGH SOME CLAIMS WERE TIME-BARRED AND SOME OF THE RESPONDENTS FAILED TO PRODUCE PAYSLIPS TO SUPPORT THEIR CLAIM

[64] During the proceedings before the Labour Court, it was found that some claims were filed outside the time limit and the payslips produced were incomplete, the details to name a few examples are set out in the table below. However, these factors were not taken into account by the Labour Court:

No	Name of respondent	Reference during the proceedings	Claims outside the time limit	Evidence in relation payslips which have been confirmed by the respondents during the Labour Court proceedings
1	Mohd Shaiful Nizam bin Mohd Noor	P4	No	Payslips were submitted at pp 219–235 C1/pp 778–794 RR (4)
2	Rashidah bt Ramli	P17	January 2014-September 2014 (nine months)	(a) no payslips for 2014 (b) salary slips submitted: – 2015: January, June through to August, October – 2016: February

3	Mohd Faizal bin Sulaiman	P15	January 2014-August 2014 (eight months)	(a) the respondent cannot claim for January 2014 through to November 2014 as the respondent only commenced employment on 17 November 2014 (b) no payslips for: – 2014: January through to October – 2015: 2019 – 2020: January
4	Crisman bin Nasra	P18	No	(a) the salary slips submitted were only for: – 2017 – 2018 except April (b) no payslips submitted for 2020
5	Mohd Daniel Azreen bin Mohd Radzuan	P1	October 2014-December 2014 (three months)	The salary slips submitted were only for: – 2018: February, June, July, August – 2019: January, March through to December

CONCLUSION

[65] Given the above, I am of the considered view that the presiding officer of the Labour Court had committed an error of law and/or fact and has failed

to exercise proper or sufficient judicial appreciation of the evidence in arriving at its decision that warrants the intervention of this court.

[66] As such, the appellant's appeal (encl 1) is allowed with costs of RM500 to be paid by each respondent in Appeal 12 and Appeal 13 respectively to the appellant subject to the allocator fee.

Appeal allowed.

Reported by Nabilah Syahida Abdullah Salleh